

1 IN THE CIRCUIT COURT
2 TWENTIETH JUDICIAL CIRCUIT OF ILLINOIS
ST. CLAIR COUNTY

3 FRANCES E. KEMNER, et al.,)
4 Plaintiffs,)
5 vs.) NO. 80-L-970
6 MONSANTO COMPANY,)
7 Defendant.)

8 Before the HON. RICHARD P. GOLDENHERSH
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12 REPORT OF PROCEEDINGS

13 July 24, 1985
14
15

16 **APPEARANCES:**

17 MR. REX CARR & MR. JERRY SEIGFRIED, Attorneys at Law
18 On Behalf of the Plaintiffs.

19 MR. KENNETH R. HEINEMAN & MR. JOSEPH NASSIF,
20 Attorneys at Law
On Behalf of the Defendant.

21
22
23 MARSHA SCHNIPPER
24 Official Court Reporter

I N D E X

PAGE

DR. EDWARD ROUSH

Clarification (by Mr. Heineman)

2

EXHIBITS

INTRODUCED

ADMITTED

Defendant's Exhibit 921

3

3

Defendant's Exhibit 921A

4

Defendant's Exhibit 921B

4

1 BE IT REMEMBERED AND CERTIFIED that heretofore, on
2 to-wit: Wednesday, July 24, 1985, being one of the regular
3 judicial days of this Court, the matter as hereinbefore set forth
4 came on for hearing before the HON. RICHARD P. GOLDENHERSH,
5 Circuit Judge, Twentieth Judicial Circuit, State of Illinois,
6 and the following was had of record, to-wit:

7 * * * * *

8 THE COURT: Mr. Heineman.

9 DR. GEORGE ROUSH,

10 resuming the witness stand, having been previously sworn,
11 testified further as follows:

12 CLARIFICATION (Continued)

13 BY MR. HEINEMAN:

14 Q Dr. Roush, you have there before you, sir, Plaintiffs
15 Exhibit 1472. Do you see that, sir?

16 A Yes, sir.

17 Q And that is a computer printout, is it not, sir?

18 A Yes, sir.

19 Q And you and Mr. Carr went over that at some length
20 in discussing the Susskind morbidity study, did you not, sir?

21 A Yes, sir.

22 Q Now, on the day that he was questioning you about
23 this, Dr. Roush, Mr. Carr also provided us with a full copy,
24 sir, of the computer printout from which that portion was

1 extracted.

2 MR. HEINEMAN: May I mark this please.

3 (At this time Defendant's Exhibit No. 921 was
4 marked for identification.)

5 Q Let me hand you, sir, what's been marked as
6 Defendant's Exhibit 921, and I would like to ask you if
7 Exhibit 1472, two pages that comprise 1472, appear in Exhibit,
8 Defendant's Exhibit 921.

9 A Yes, sir.

10 Q All right.

11 MR. HEINEMAN: Your Honor, I know that it's -- it's
12 not the defendant's case yet, but I would, if Mr. Carr has
13 no objection, I would like to offer Defendant's Exhibit 921
14 into evidence at this time even though it's not our case yet.

15 THE COURT: Mr. Carr, do you have any objection
16 to that?

17 MR. CARR: I'd have to see it first, your Honor.

18 THE COURT: Sure. Would you show it to Mr. Carr
19 please.

20 MR. HEINEMAN: Sure.

21 MR. CARR: I have no objection.

22 THE COURT: Fine. Then by agreement Defendant's 921
23 is admitted.

24 MR. HEINEMAN: Thank you. Now, your Honor, since

1 it's in evidence, would it be all right with the Court if I
2 pass copies to the jury?

3 THE COURT: Sure.

4 MR. CARR: I didn't check it all carefully, counsel.
5 I assume you're representing that it is a copy of that which
6 I gave you?

7 MR. HEINEMAN: Certainly.

8 MR. CARR: Fine.

9 (Exhibit passed to the jury.)

10 (Defendant's Exhibits 921A and 921B marked for
11 identification.)

12 Q Dr. Roush, let me hand you what's been marked as
13 Defendant's Exhibit 921A, and would you tell me if that is
14 a duplicate of the seventh page of Exhibit 921?

15 A Yes, sir.

16 Q And I'd like to hand you next what's been marked
17 Defendant's Exhibit 921B--

18 MR. CARR: Do you have copies for us, Counsel?

19 MR. HEINEMAN: Certainly.

20 Q -- and I'd like to ask you, sir, if that is a
21 duplicate of the ninth page of Exhibit 921?

22 A Yes, sir.

23 MR. HEINEMAN: Your Honor, with the Court's permission,
24 I'd like to pass copies of Exhibits 921A and B to the jury as

1 well.

2 THE COURT: Fine. They're part of an admitted
3 Exhibit. Go right ahead.

4 (Copies of exhibits passed to the jury.)

5 Q Now, Dr. Roush, do you remember when Mr. Carr was
6 questioning you with respect to Plaintiffs' Exhibit 1472,
7 he pointed out, sir, did he not, a couple of instances in which
8 the printout on 1472 would say yes to skin cancer history
9 and no to cancer history; do you remember that, sir?

10 A Yes, sir.

11 Q And you see that, for example, in 1472 in the very
12 first entry for Mr. Crites, do you not?

13 A Yes, sir.

14 Q And on the first line there there's a -- of the
15 printout, what is the reference, what does it say for skin
16 cancer history? How does it refer to it?

17 A For Crites it abbreviates skin cancer history equals
18 yes.

19 Q Now, what is the abbreviation, sir?

20 A It's S-K -- I'm accepting this as I know -- it's
21 S-K stands for skin and C-A stands for cancer, and H-I-S-T
22 is for history.

23 Q All right. And then equals yes, correct?

24 A Yes.

1 Q And the next one is cancer history, and how is
2 that abbreviated?

3 A C-A-N-C, probably meaning cancer, and H-I-S-T for
4 history.

5 Q All right. Now, you and Mr. Carr discussed whether
6 that represented some sort of mistake by Dr. Susskind. Do you
7 remember that?

8 A Yes, sir.

9 Q And that there was some sort of obvious inconsistency
10 there, how could one have yes for skin cancer history, and yet
11 no --

12 MR. CARR: I object, your Honor. Counsel is now
13 testifying.

14 THE COURT: Objection sustained. It's ordered
15 stricken. Please refrain from leading questions.

16 Q Do you recall your examination by Mr. Carr, do you,
17 sir?

18 A Yes, sir.

19 Q Now, let me direct your attention to Exhibit,
20 Defendant's Exhibit 921A. You see that, sir?

21 A Yes, sir.

22 Q You see item -- you see the left hand column there
23 they have a number for each line?

24 A Yes, sir.

1 Q Look at Line No. 14; you see that?

2 A Yes, sir.

3 Q And it says value, no, yes. You see that, sir?

4 A Yes, sir.

5 Q Zero equals no; does it say that?

6 A Yes, sir.

7 Q One equals yes?

8 A Yes, sir.

9 Q A period equals miss?

10 A Yes, sir.

11 Q Right. Now, do you know, sir, whether these are
12 instructions to the computer, this is programming for the
13 computer?

14 A Yes, sir.

15 Q Now, let me direct your attention to the -- well,
16 it would be to Exhibit 921B, Defendant's Exhibit 921B.

17 A Yes, sir.

18 Q Look at the top line on that, number 107, do you
19 see that?

20 A Yes, sir.

21 Q Line 107. It says, does it not, sir, if sympt --
22 would that mean symptom?

23 A I presume so.

24 Q If sympt equals S00245 then S-K-C-A-H-I-S-T equals one--

1 A Yes, sir.

2 Q -- does it not?

3 A Yes, sir.

4 Q We just saw S-K-H -- S-K-C-A-H-I-S-T standing
5 for?

6 A Skin cancer history.

7 Q All right. One we just saw on the previous exhibit
8 stands for?

9 A Yes.

10 Q Yes. All right. So if there's a symptom with a
11 number, then skin cancer history is yes?

12 A Yes, sir.

13 Q Right? Now look at Line 112 on Exhibit 921B.

14 A Yes, sir.

15 Q It says if symptom equals S00030 or symptom equals
16 S00280 or symptom equals S00059 then CANCHIST equals 1?

17 A Yes, sir.

18 Q Correct? Now, we've seen CANCHIST before on
19 Exhibit 1472, have we not, sir?

20 A Yes, sir.

21 Q For cancer history? We know that one equals yes
22 from the previous exhibit you just looked at, correct?

23 A Yes, sir.

24 Q So that is the computer being told here, sir--

1 MR. CARR: Objection, your Honor.

2 THE COURT: Objection sustained.

3 Q What is the computer being told here, sir, in this
4 Line 112, sir?

5 A In Line 112 I don't know what those symptoms are,
6 we'd have to find out, but someplace it tells you what S00030
7 and the rest of those symptoms are, it identifies them with a
8 specific symptom, and if they have any one of those three
9 symptoms, then the cancer history is yes.

10 Q All right. Now, for the skin cancer history to be
11 yes what does 107 say the symptom has to be?

12 A Well, there's only one symptom that is equal, that
13 says if you have this, then you've got skin cancer history,
14 and that's S-double O-245.

15 Q All right. Is S-double O-245 listed among the
16 symptoms that give a yes for cancer history?

17 A No, sir.

18 Q So is -- according to the computer programming, sir,
19 is skin cancer history even included among the things that
20 would give rise to a positive answer on cancer history?

21 A No, sir.

22 Q So by the very programming of the computer you
23 could have a yes for skin cancer history and a no for
24 cancer history, correct?

1 A Yes, sir.

2 Q Now, sir, when Mr. Carr was going through Exhibit
3 1472 with you, did you tell him that you didn't know where
4 those two entries came from, skin cancer history and cancer
5 history?

6 A Yes, sir.

7 Q Why did you tell him that?

8 A I had talked to Vicky Hertzberg after we had
9 received this, and asked her about this, and she didn't
10 recognize those two identifiers.

11 Q Now, Vicky Hertzberg -- yesterday, sir, you
12 mentioned the fact that in 1982 there was a change in what
13 Dr. Susskind was doing to develop the data from his morbidity
14 study, correct?

15 A Yes, sir.

16 Q What was it that Vicky Hertzberg did in 1982?

17 A She took over the computer program for the morbidity
18 study of Susskind.

19 Q Is she a computer operator, sir?

20 A I'm not sure what her background is, but she's
21 a biostatistician or a computer, one of the two, computer
22 expert.

23 Q And to your knowledge, sir, did she develop the
24 computerization plan for the data that was submitted, gathered

1 by Dr. Susskind in the Nitro morbidity study?

2 A Yes, sir.

3 Q And she never saw or she didn't know or was not
4 familiar with those two --

5 MR. CARR: Object to the leading form of the
6 question, if it please the Court.

7 THE COURT: Objection sustained.

8 Q Did she know what those two entries were, skin
9 cancer history and cancer history?

10 A No, sir.

11 Q Is it possible, sir, that the tape produced by Dr.
12 Susskind would be re-programmed by someone else?

13 MR. CARR: Your Honor, I object to that. That
14 calls for speculation on the part of the witness.

15 THE COURT: Objection sustained.

16 Q Well, you don't know, sir--

17 MR. CARR: Object to that leading form of the
18 question.

19 THE COURT: Objection sustained.

20 Q Do you know, sir, one way or the other?

21 A No, sir.

22 Q Do you know what happened to Dr. Susskind's tape?

23 A It was -- I'm not sure whether it's called subpoenaed,
24 but --

1 MR. CARR: Object unless he first states the source
2 of his knowledge.

3 MR. HEINEMAN: Your Honor, I think Mr. Carr showed
4 him an exhibit.

5 THE COURT: Not as far as what the actual tape is
6 concerned.

7 MR. CARR: It might be hearsay, Counsel, in which
8 case I might want to object.

9 THE COURT: I think you have to show the source of
10 the knowledge. Objection is sustained, so lay your foundation
11 before you get into the substance of your question please.

12 MR. HEINEMAN: I'm looking for the exhibit number,
13 your Honor.

14 THE COURT: Sure. Go ahead.

15 MR. HEINEMAN: I thought there was an exhibit, a
16 plaintiffs' exhibit showing that Dr. Susskind sent the tape
17 to somebody, and I want to find that.

18 MR. CARR: There was a plaintiffs' exhibit. 1469
19 is the exhibit.

20 MR. HEINEMAN: Yeah, 1469. Thank you.

21 Q Let me show you, sir, what's been marked as
22 Plaintiffs' Exhibit 1469.

23 A Yes, sir.

24 Q That was shown you by Mr. Carr, was it, sir?

1 A Yes, sir.

2 Q And is that document, in evidence, your Honor?

3 MR. CARR: It is. It's been offered and admitted
4 over your objection.

5 MR. HEINEMAN: All right..

6 THE COURT: Okay.

7 Q Now, what does this document say, sir -- well, first
8 of all, who is the author of it?

9 A Dr. Raymond Susskind.

10 Q And who was it, who's the recipient?

11 A Mr. Charles Love of the Bowles, McDavid, Graft,
12 and Love--

13 Q Law firm?

14 A Law firm.

15 Q Located where?

16 A Charleston, West Virginia.

17 Q And what is the connection, if any, between Mr.
18 Love and Monsanto Company?

19 A Mr. Love was the attorney who ran the defense of
20 Monsanto in the Nitro lawsuit.

21 Q All right. Now, what does this document say, sir,
22 with respect to Dr. Susskind's tape?

23 A It says that "I am submitting to you at the Court's
24 request for transmission two tapes of the computer files on

1 418 participants whose records have been programmed for computer
2 analysis."

3 Q Where does it say that, sir?

4 A In the second paragraph.

5 Q It says --

6 MR. CARR: Object to the leading form of the
7 question. He said exactly what it said already, your Honor.

8 THE COURT: Objection sustained.

9 Q Do you know, sir, to whom it was to be transmitted?

10 A No, sir.

11 Q At any rate, was it at the Court's request?

12 A Yes, sir.

13 Q And did Mr. Carr during your questioning tell you
14 that this is how he received the tape?

15 A Yes, sir.

16 Q But Mr. Carr was not the plaintiffs' attorney in
17 the Nitro lawsuit, was he, sir?

18 A No, sir.

19 Q Now, Mr. Carr--

20 MR. CARR: Counsel, are you suggesting, is there
21 an inference there that my possession of these tapes is improper?

22 MR. HEINEMAN: No, sir.

23 MR. CARR: Because the record and the jury should
24 know that this material was produced to us by you, the same

1 material was produced to us by you by order of this Court
2 and not the Court in West Virginia.

3 MR. HEINEMAN: Yes, sir, that is exactly right.
4 This Court -- this Court ordered them to be produced, and
5 the very same materials.

6 MR. CARR: That's exactly right.

7 THE COURT: That's correct.

8 Q Now, Doctor, with respect to this Exhibit 1469,
9 did Mr. Carr ask you, sir, why there was a difference between
10 the total number of people who responded to Dr. Susskind and
11 the number actually studied?

12 A Yes.

13 Q Do you recall that?,

14 A Yes.

15 Q Does this letter from Dr. Susskind offer an
16 explanation for that?

17 A Yes.

18 Q And what does it say, sir?

19 A It says "not included in the tapes are data on 18
20 subjects, five black males, one male of hispanic descent,
21 one male of American Indian descent, ten white females, and
22 one white male who had accidentally been exposed as a child.

23 Q Go ahead, sir.

24 A They were not included in the computer program data

1 analysis because the numbers of each of these categories were
2 too small for epidemiologic comparisons. All the examination
3 data, however, on each of these 18 subjects are included in
4 the 436 hard copy records.

5 Q All right. Now, does that address the difference
6 between -- if they're included in the 436, sir, hard copy
7 records--

8 A Yes, sir.

9 Q All right. Does that address the difference between
10 the 450 and the 436?

11 A No, sir.

12 Q No, sir? All right. Now, Dr. Roush, Mr. Carr
13 asked you about people in the Nitro studies who had been --
14 who had either retired or terminated their employment prior
15 to 1955, do you remember that?

16 A Yes, sir.

17 Q And he suggested to you, did he not, when he
18 questioned you that these people had been exposed to 2,4,5-T
19 and TCP production for some maybe 20 or 30 years?

20 A Yes, sir.

21 Q And that these people may have been the sickest of
22 all because of those 20 or 30 years that would correspond to
23 a latency period for cancer?

24 A Yes, sir.

1 Q When did production of 2,4,5-T begin at Nitro,
2 West Virginia?

3 A Shortly before the accident. It was within a year
4 or two after start-up that they had the accident.

5 Q And was that the same time when TCP production
6 began?

7 A Yes, sir.

8 Q Was the accident in 1949 in an autoclave in a pilot
9 plant?

10 A No, sir.

11 Q Now, would it be possible, sir --

12 MR. CARR: Object, your Honor, it calls for
13 speculation.

14 THE COURT: Objection is sustained.

15 MR. HEINEMAN: I think it calls for arithmetic,
16 your Honor.

17 THE COURT: Could you rephrase the question please.

18 Q If the production began in 1948--

19 A Yes, sir.

20 Q -- and someone was terminated employment--

21 MR. CARR: Objection. There's no evidence that
22 production began in 1948.

23 THE COURT: Objection sustained.

24 MR. HEINEMAN: It was a year or two before the

1 autoclave incident.

2 MR. CARR: He didn't say a year or two. He said
3 two years.

4 MR. HEINEMAN: No, sir, he said a year or two.

5 THE COURT: My notes indicate he said one or two
6 years. You may proceed on that basis. There is no evidence
7 of 1948, per se.

8 Q All right. If it began, sir, one or two years
9 before the autoclave eruption in 1949, would it be possible
10 for someone to have been exposed to it for 20 or 30 years--

11 A No, sir.

12 Q -- before a termination of employment in 19 --
13 before '55?

14 A No, sir.

15 Q Now, when Dr. Susskind, before he undertook the
16 Nitro morbidity study, by that I mean, before he actually
17 went down and began the examinations, did he have any kind of
18 a meeting at Nitro?

19 A Before he began his examinations he appeared before
20 the work force and described for them what he was planning to
21 do and it was like old home week with him knowing some of the
22 people that he had examined in the early 50's, so what he was
23 doing is to describe what he was going to do and why he was
24 going to do it.

1 Q To whom, to the entire work force?

2 A Yes, they were all invited.

3 Q The attendees were the people that were going to
4 participate in the examinations?

5 A I think so, but I'm not sure that they were the
6 same.

7 Q Not sure they all came?

8 A Right, right.

9 Q Were some of the people there, some of the same
10 people that he had examined back in 1949 and 1950?

11 A Yes, sir.

12 Q Did they recognize one another?

13 A They sure did.

14 Q Now, after the study was completed, sir, did Dr.
15 Susskind have a meeting at Nitro?

16 A Yes, sir.

17 Q And approximately when did that occur?

18 A Within a year or two after the study was completed.

19 Q All right. And whom did he meet with on that
20 occasion?

21 A The work force again, and what he did this time--

22 Q At Nitro?

23 A Yes, sir.

24 Q All right.

1 A And this time he gave them a series of slide
2 presentations of the tables that he used in that bound report.

3 Q So he went and did he report the results?

4 A Yes.

5 Q Did he tell them the conclusions he had come to?

6 A Yes, sir.

7 Q And did he tell them why?

8 A Based on the tables that he had shown them.

9 Q Did Dr. Moses have a meeting of that kind, do you
10 know?

11 A I don't know.

12 Q Don't know whether she did or not?

13 A No, sir.

14 Q Her study, did her study involve the Nitro work
15 force?

16 A Yes, sir.

17 Q Dr. Roush, if I can direct your attention to Exhibit
18 1472, Plaintiffs' Exhibit 1472, the first entry there is for
19 whom again, sir?

20 A It's for number 8, and it's listed there as Crites.

21 Q Okay. Mr. Crites' name is written in there?

22 A Right.

23 Q And in connection with the 921A and B, sir, is Mr.
24 Crites listed there as having symptom 245?

1 A Yes.

2 Q And skin cancer history, therefore, is listed as yes?

3 A Yes, sir.

4 Q Does Mr. Crites have symptom 30, symptom 280 or
5 symptom 59?

6 A What was the--

7 Q I'm sorry, 30, 280, and 59.

8 A No, sir.

9 Q So then the cancer history would be no?

10 A Yes.

11 Q Now, sir, when Mr. Carr went over with you the
12 records which are contained there in Plaintiffs' Exhibit 1468--

13 A Yes, sir.

14 Q These are the records that we talked about yesterday
15 of the Nitro, of some of the Nitro workers?

16 A Yes, sir.

17 Q In the Nitro morbidity study?

18 A Yes, sir.

19 Q Plaintiffs' Exhibit 1468, had you ever seen those
20 before he showed them to you?

21 A No, sir.

22 Q And you went through them that day with Mr. Carr,
23 did you not?

24 A Yes, sir.

1 Q And he pointed out to you or did he point out to you
2 specific places that you should look?

3 A Yes, sir.

4 Q -- in the records?

5 A Yes, sir.

6 Q And to report particular information out of the
7 records?

8 A Yes, sir.

9 Q Now, since that time, sir, have you had an opportunity
10 to review all those records and read them?

11 A Yes, sir.

12 Q All right. I'd like to discuss with you now that
13 you've had an opportunity to do that, these 27 or 28 cancers.

14 A Yes, sir.

15 Q All right. Now, first of all, we have Mr. Willard
16 Crites, do we not, sir?

17 A Yes, sir.

18 Q He's the first one on the list?

19 A Yes, sir.

20 Q And Mr. Crites' I.D. No. 8 there, you got it there?

21 A Yes, sir.

22 Q Okay. Now, let's discuss Mr. Crites' skin cancer.
23 Would you tell us what the record shows with respect to Mr.
24 Willard Crites?

1 A On Page 15 it states, "have you ever been told by a
2 doctor you have any kind of cancer", and he said "yes."
3 And then if yes, what kind of cancer, and he specified that
4 he had skin cancer.

5 Q Umhm. So he told the interviewer yes?

6 A Yes, sir.

7 Q And what does the physician or the dermatologist
8 report indicate, sir?

9 A On the history the dermatologist says that he had
10 a rash over 90 percent of his body that had been treated with
11 penicillin and x-ray, and he had a skin cancer taken off of
12 his neck one year ago.

13 Q All right. And did the physician use the term
14 skin cancer?

15 A Yes, sir.

16 Q All right. Now, what does that mean, insofar as
17 you're concerned in reviewing those records as to whether or
18 not Willard Crites indeed has a skin cancer?

19 A There's another part, physical examination by--

20 Q All right, sir.

21 A In addition to recording this as his own history
22 and telling when it took place and where it was, more specific,
23 it also says that he had an area of basal cell epitheliomas,
24 which means he had other skin cancers on his -- it doesn't say

1 that I can read where it is, but he had others apparently
2 in -- associated with this other lesion he had on his neck.

3 Q Now, sir, what is the relationship between the
4 physical examination that the dermatologist or the physician
5 can perform and the report -- and a report from the person
6 himself with respect to skin cancer?

7 A The patient or the worker in this case had gone
8 to a doctor, we don't understand how he went there, but he
9 went to a doctor, and the doctor had taken a lump, a raised
10 area off of his back, and he was told that he had a skin cancer,
11 both by the medical records as well as by the physician asking
12 the question. Now, the interesting thing and the important
13 thing is not only did he have that lesion, that skin cancer,
14 but he had areas of other ones that would substantiate it.
15 In other words, the fact that he had these makes it fit
16 together very well.

17 Q Well, let's assume, sir, for example, that he --
18 he or another one of the people contained in those records
19 would report to the interviewer that he had skin cancer or
20 someone had told him he had skin cancer--

21 A Yes, sir.

22 Q Would there be any way for the physician to make a
23 determination in the examination in this study, in the physical
24 examination in this study, as to whether or not that was accurate?

1 A When the man has a lump or bump or mass taken off
2 of his skin, quite often those are not analyzed histologically.
3 The only thing that the dermatologist has to do is to make
4 sure he gets it off, and he may burn it off, he may freeze it
5 off, or he may cut off, and any one is equally satisfactory,
6 and the reason they don't get histology on these is that is
7 costs more money, and it really doesn't make any difference
8 whether you do it or not anyway, so the data regarding skin
9 cancers by history is not good, because it may well just be
10 a precancerous lesion or it may not be a cancer at all, but
11 it's best to take it off.

12 Q When you say examine histologically, what do you
13 mean?

14 A If you want to find out whether he had a cancer,
15 you've got to take that lesion and put it in alcohol and
16 fix it and send it to the hospital or someplace where the
17 pathology group will cut it up after fixing it, and mounting
18 it on a slide, stain it, and read it and then say, yes, he did
19 or did not have cancer.

20 Q Examine under a microscope?

21 A That's right.

22 Q -- to see. Now, why is it, sir, that the mere
23 recitation by the person of -- to the interviewer that he
24 did or did not have a skin cancer is not as good as the physical

1 examination portion to check that out?

2 A Well, he could have had a mass taken off. It may
3 or may not have been a cancer, because it was never examined
4 histologically, it hadn't been gone through that pathological
5 study. The physician, because people are exposed to sun
6 radiation, develop a characteristic raising up of the skin,
7 we call it keratosis, which is scaling and raising up of
8 the skin, that those are called precancerous lesions, and
9 sometimes they take them off without them being cancer. So
10 if he's got one as described here, he also had others that
11 were there as well.

12 Q Now, so is it -- is it possible to determine in the
13 physical examination portion by the dermatologist whether or
14 not a person's memory or characterization of whether or not he
15 had a skin cancer is accurate?

16 A It can be evaluated and confirmed or questioned or
17 denied.

18 Q In the course of a physical examination?

19 A That's right.

20 Q And how can they do that?

21 A Because of the precancerous lesions that are usually
22 always associated with these lesions.

23 Q So they can actually look at the skin?

24 A Right.

1 Q -- and tell if there's been anything like that?

2 A Right. This is a classical one where they found
3 basal cell epitheliomas present.

4 Q So with Willard Crites there was yes, there was yes
5 in what he told the interviewer, and the doctor confirmed yes?

6 A Yes, sir.

7 Q So where does that lead you with respect to whether
8 or not Willard Crites in fact has a skin cancer or did have?

9 A He did have a skin cancer. We're still left with
10 the question whether it was, whether he was exposed or not.

11 Q All right. Now, what does the record tell you
12 with respect to his exposure?

13 A That he had working with 2,4,5-T as an operator for
14 just over a year.

15 Q All right. So does that indicate to you whether or
16 not he was exposed?

17 A Yes, sir, he was exposed.

18 Q Okay. Now, let's take Edward Miller. What does
19 the record tell you with respect to whether or not he has
20 a bladder cancer or had one?

21 A The worker himself stated that yes, he had a cancer,
22 and it was -- he called it a bladder cancer.

23 Q Okay. Interview was yes for a bladder cancer?

24 A Yes, sir.

1 Q All right. What about the doctor?

2 A On his history he stated that he had had surgery
3 for cancer of the bladder in 1976, and at best I can read it,
4 and there's a problem with these because they're not clear,
5 I think it says, and he was started on chemotherapy.

6 Q Okay. So what does -- the doctor states that he
7 had a bladder cancer removed, right? He uses the term cancer?

8 A Yes, sir.

9 Q All right. And --

10 A In the final -- then these are summarized usually
11 at the end. There was an abnormal findings and physical
12 examinations are recorded, and it's so poorly written, it's
13 so faint I can't read what was there, but there's a lot that
14 had been written here that I can't evaluate.

15 Q In other words, because of the copying?

16 A Yes.

17 Q Okay. Now, what does the record tell you about
18 his exposure?

19 A He was a maintenance worker and had been working
20 all through the plant.

21 Q Does that indicate that he was exposed?

22 A I don't know. Could have been.

23 Q Question exposure?

24 A Yes, sir. I'd call it questionable, but it may well

1 have been.

2 Q Possible?

3 A Yes, sir.

4 Q Now, what about --

5 MR. CARR: He worked in Building 41 in 1949. That's
6 where they were making 2,4,5-T. How can there possibly be
7 a question about that? You surely know the number of the building.

8 THE WITNESS: Yes, sir, you're right.

9 MR. CARR: Yes.

10 THE WITNESS: You're right.

11 Q So question -- so no question?

12 A That's right, no question.

13 Q All right. Now, what about John Hein, sir? What does
14 the record indicate with respect to John Hein having bowel
15 cancer?

16 A He had a cancer, and he said that it was a bowel
17 cancer, the worker did.

18 Q To whom?

19 A To the questioner, the interviewer.

20 Q The interviewer. Interview was yes for bowel, is
21 that right?

22 A Yes, sir.

23 Q What did the doctor have to say?

24 A The doctor in his history said that he had a colon

1 tumor in 1974.

2 Q So the doctor said tumor?

3 A Yes.

4 Q What does that indicate to you with respect to
5 whether or not Mr. Hein had a bowel cancer?

6 A At that -- based on his history he wasn't sure whether
7 he had a cancer or not.

8 Q Did the doctor say that the tumor was removed?

9 A Yes, he had two midline scars, one for gallbladder
10 and apparently the other one for the colon tumor.

11 Q For a tumor?

12 A Yes.

13 Q Now, is it frequent or do people have benign tumors
14 removed?

15 A Yes, sir.

16 Q All right. And the doctor characterized it as a
17 tumor and not a cancer?

18 A Yes, sir.

19 Q All right. What does that tell you with respect
20 to whether or not John Hein has in fact a bowel cancer that
21 should be included?

22 A I have to leave it as a question. It may have been
23 a cancer, but the definition wasn't clear enough for him to
24 decide.

1 Q For whom to decide?

2 A For the physician who had done this. As a matter
3 of fact, then on the summary sheet, they again list the
4 findings on the man on history, and it says again that he had
5 cecum tumor in 19 -- I can't read it -- but he did have, he
6 was operated on for a tumor. Whether it was a cancer or not
7 he couldn't say.

8 Q All right. Now, what about Edward Mc -- oh, I'm
9 sorry, what about exposure, sir?

10 A He was exposed.

11 Q Was exposed. What about Edward McDade, sir?

12 A The workman told the interviewer that he had a
13 cancer, and he had a skin cancer.

14 Q What did the doctor say?

15 A In the past several years has required removal of
16 several skin tumors.

17 Q The doctor in this occasion said skin tumor?

18 A Yes.

19 Q Whereas up here the doctor said skin cancer?

20 A Yes, sir. And on physical findings he described
21 that he had actinic changes on his face, neck, and arms, and
22 he had multiple, rough scaly hyperkeratotic patches on the
23 face, neck, and ears. That's it.

24 Q Okay. What does that indicate, sir?

1 A Then we have to go back and see if they have
2 anything more on their summary. On the summary on this man
3 they didn't list any evidence that he had a cancer, and on
4 his diagnoses they still didn't list cancer, but they described
5 the effect of sunlight on his skin.

6 Q All right. And was he exposed or not exposed?

7 A Yes, sir.

8 Q All right. How about Harry Reynolds?

9 THE COURT: Before we get into Mr. Reynolds is
10 this a good point for a short break?

11 MR. HEINEMAN: That will be fine, Judge.

12 THE COURT: Okay. Ladies and gentlemen, we'll
13 take a short break at this time. I would remind you, and
14 this goes for any other breaks we take during the day, that
15 you're not to discuss this matter among yourselves or with
16 anyone outside the jury panel or as of yet form any opinions
17 or conclusions about the matters on trial. Court's in a
18 short recess.

19 (At this time a short recess was taken.)

20 DR. GEORGE ROUSH,

21 resuming the witness stand, having been previously sworn,
22 testified further as follows:

23 CLARIFICATION (Continued)

24 BY MR. HEINEMAN:

1 Q Dr., we were just starting on Harry Reynolds.

2 A Yes, sir.

3 Q -- just before the break. What was said in the
4 interview with respect to Harry Reynolds?

5 A He described that he had a bladder cancer.

6 Q All right, sir. And what did the doctor have to
7 say?

8 A History was much more complete. It said he had
9 15 to 20 years repeated cystoscopic examinations, and he had a
10 transurethral resection 12 years ago, and he was hospitalized
11 where a cystectomy was done for a bladder cancer.

12 In addition to that, there's a note that he had
13 been exposed to a paramedial biphenol that's known to be a
14 carcinogen for the bladder.

15 Q So the doctor's report does demonstrate a bladder
16 cancer?

17 A Yes, sir. And then in the summary the doctor again
18 writes down bladder cancer, PAB exposure and subsequent
19 partial cystectomy.

20 Q All right. Now, what does the record -- pardon me,
21 let me strike that again. What does the record demonstrate
22 with respect to his exposure, sir?

23 A The report from Cincinnati was that he was not
24 exposed, and in my going through the record I couldn't see that

1 he was exposed either.

2 Q All right, sir. What about Edward Volz, sir?

3 A Mr. Volz described that he had a papilloma, grade
4 one, which he called in the history, he says, have you ever
5 been told you have any type of cancer; he said, yes, as
6 specified, and specified was bladder.

7 Q I'm not sure I'm understanding, sir. In the
8 interview there's a yes for bladder?

9 A Yes.

10 Q And in the interview what does it say about skin
11 cancer?

12 A On history it says by the physician a benign bladder
13 tumor was removed in 1951. And then on the summary sheet
14 they summarize, and he has 11 different problems by history,
15 and one of them was benign bladder tumor in 1951.

16 Q So the answer to cancer as to the bladder by the
17 doctor would be no?

18 A Would be benign. Benign means he didn't have a
19 cancer.

20 Q Okay. What about on the skin cancer, sir, for the
21 interview and the doctor?

22 A On the interview skin cancer is not listed, and on
23 physical examination he did have a basal cell cancer on the
24 right side on the back of his chest, posterior thorax we call

1 it, and there was no abnormalities on the skin associated with
2 it, although he did have the same actinic relations or the
3 sun effect on the skin, which would be a basic problem we're
4 talking about, problem he had.

5 Q So the doctor by -- is that --

6 MR. CARR: Object to the leading form of the
7 question.

8 THE COURT: Objection sustained.

9 Q I'm not sure I understand, Doctor, with respect to
10 the doctor's statement on the basal cell cancer. Is that
11 by history or by--

12 A Yes, sir.

13 Q -- examination?

14 A By history, and he could not confirm it on the
15 physical examination and the summary, but he did list on his
16 diagnosis is that benign tumor of the bladder and the basal
17 cell carcinoma of the back.

18 Q And that would be the skin?

19 A Right, he just confirms it and summarizes it.

20 Q All right. Now, now about Harry Honaker, sir?

21 Oh, I forgot to ask you about Mr. Volz, was he exposed, sir?
22 Did the record indicate exposure?

23 A Yes, sir. On history Mr. Honaker told the interviewer
24 that yes, he had a cancer, and he listed leukemia and he listed

1 as well prostate.

2 Q Okay. What did the physician say?

3 A He described by history a cancer of the prostate.

4 On examination the prostate was still enlarged, so then he
5 confirmed it that he had a prostate cancer; and his blood
6 count was markedly elevated so it was quite consistent with the
7 fact that he had leukemia.

8 Q All right. How about exposure, sir?

9 A He was exposed.

10 Q How about John Selby?

11 A Mr. Selby on his history--

12 Q Excuse me, was that the interview or --

13 A Yes.

14 Q On the interview?

15 A Right. Stated that he had a skin cancer.

16 Q All right. Doctor, what did the doctor have to say?

17 A He writes down on history, skin cancer, question
18 mark, and it was behind his left ear that was removed by
19 surgery in 1963.

20 Q So the doctor puts a question mark beside skin
21 cancer?

22 A Right.

23 Q And was -- what does the record reflect with respect
24 to exposure, sir, or is there more on the medical record with

1 respect to the skin cancer, sir?

2 A I really can't read the summary on this form,
3 because it's so faint, so he may have said something there
4 that would have helped me, but in his summary he did not
5 list skin cancer.

6 Q In the summary he did not?

7 A Right. He didn't list it as one of the diagnoses.

8 Q All right.

9 A So it's a question of skin cancer.

10 Q And we have it with a question mark, do we not,
11 sir?

12 A Right.

13 Q What about the exposure, what does the record
14 indicate with respect to that, sir?

15 A That's Mr. Selby. He was exposed.

16 Q All right, sir. How about Lowell West?

17 A On history it lists him as having had a cancer,
18 and it goes further to state it is of the skin, and he had had
19 it twice. There's some notation below that description that
20 I can't read, so there's other information that's not available
21 to me.

22 Q As you read that--

23 A That's right.

24 Q -- this copy?

1 A That's right.

2 Q -- that you have there?

3 A There was more available to Susskind than there
4 is to me.

5 Q What do you mean, there's more available?

6 A He could read that note there that I can't read.

7 Q I see. What does the physician say about Mr. West?

8 A He describes him as having chloracne and nothing
9 else.

10 Q So the physician does not mention a skin cancer?

11 A No, sir. And Selby was exposed.

12 Q The mention of chloracne, sir, was that in the
13 physical examination?

14 A Wait a minute. That was West we were talking
15 about, wasn't it?

16 Q Yes.

17 A He was exposed as well.

18 Q The chloracne, sir, was that mentioned in the
19 physical examination or in the history that the doctor took?

20 A This was the doctor's.

21 Q I understand it's the doctor, but I'm saying the
22 doctor did a history and a physical, correct?

23 A Yes, yes. That was by history.

24 Q History of chloracne?

1 A Yes, and he didn't -- he did not observe it.

2 Q All right. No observation in the physical of
3 chloracne?

4 A Right.

5 Q And nothing mentioned at all by the doctor about
6 skin cancer?

7 A Right.

8 Q Now, what about Keith Hill, sir?

9 A On history Mr. Hill stated that he did not have cancer,
10 and there is a notation of two related to that, and I can't
11 tell what that means.

12 Q Now, on the interview -- pardon me -- on the
13 interview he denied cancer, is that what you said?

14 A Yes.

15 Q And there's a notation of what, I didn't catch that?

16 A With the no, there's a two beside it, and only thing
17 I can think is he said no to two kinds of cancer, but I'm
18 not sure of that. That's --

19 Q All right. What did the doctor have to say, sir?

20 A The doctor said he had a mole on his back that he
21 was told was malignant.

22 Q All right. Anything else?

23 A The history by the physician recorded that he had
24 a benign bladder neck tumor that was surgically treated with

1 no recurrence.

2 Q So the doctor said what about the mole, was that
3 by history?

4 A Benign -- yes.

5 Q There was a--

6 A Benign bladder tumor.

7 Q What about the mole, sir?

8 A By history that was malignant.

9 Q All right. But with respect to the bladder neck
10 tumor, it was benign?

11 A Right.

12 Q Clarence Matheny, sir. Oh, I'm sorry, there is one
13 thing I forgot to ask you. Was Keith Hill exposed according
14 to the record that you have, sir?

15 A Yes, he was exposed.

16 Q Clarence Matheny, what about the interview?

17 A When he was asked if he had a cancer, it was yes,
18 and it's listed as bowel cancer.

19 Q What did the doctor have to say?

20 A He had cancer -- on history he had a cancer of colon
21 after his surgery for some kind of an umbilical something.

22 Q You can't read--

23 A No, I can't read it, but on the summary it says
24 by history had a colon cancer and his summary says ulcer-like

1 pain and that's when he had pain and they went and examined
2 why he had pain, and he had a colon cancer that was diagnosed
3 and this operation was done in 1970, but this all comes from
4 the physical, his physician's examination.

5 Q And how about exposure, sir, what do the records
6 indicate with respect to exposure?

7 A Exposed.

8 Q And Roy Woodall?

9 A He had --- history is that he does have a cancer,
10 and that it was a skin cancer.

11 Q And what did the physician have to say?

12 A He said he had three basal cell cancers on his face
13 and chest. That was by history. And he had the scars on his
14 face that apparently resulted from them being taken off.

15 Q And the physician specifically used the term
16 skin cancer?

17 A Yes.

18 Q All right. What does the --

19 A And in the summary again they repeat this, but this
20 is a summary of all the physical findings. He said he had a
21 history of basal cell carcinoma.

22 Q In addition to that, he had actinic damage to the
23 skin that would be consistent with that diagnosis.

24 Q Basal cell carcinoma?

1 A Yes, sir.

2 Q And how about exposure, sir?

3 A He was exposed.

4 Q The records indicate he was exposed?

5 A Yes, sir.

6 Q How about June Martin, sir?

7 A On history it lists that he had a cancer, and it
8 was a cancer of the bladder.

9 Q That's in the interview, sir?

10 A Yes, sir.

11 Q All right.

12 A And the physician in his history said he had a
13 cancer of the bladder removed in 1976 with no recurrence.

14 Q And the physician used the term cancer?

15 A Yes, sir.

16 Q And what about the summary, sir?

17 A The summary just confirms that.

18 Q All right. And what do the records indicate with
19 respect to exposure, sir?

20 A This is Matheny?

21 Q No, June Martin, sir.

22 A Exposed.

23 Q Now, Frank West.

24 A By history to the interviewer he had a cancer, and

1 it was a skin cancer, and the physician in his history lists
2 him as having a skin cancer on his right hand and forehead
3 years ago.

4 Q And the physician used the term cancer?

5 A Yes, and he also had the same problem of solar
6 elastosis with telangiectasias on the face and forearm.

7 Q What's a telang -- what was that again?

8 A Dilatation of the blood vessels.

9 Q Okay. What's the term again?

10 A Telangiectasias.

11 Q Okay. And what do the records indicate with
12 respect to exposure, sir?

13 A Exposed.

14 Q On Frank West.

15 A Exposed.

16 Q Exposed. The next, sir, is James McGinn.

17 A Mr. McGinn said he did have a cancer, and he had
18 skin cancer, and he states also that he had it three times.

19 Q All right. And the doctor?

20 A The doctor said by history that he has skin cancer
21 treated, and he also had solar effects or sun effects. He
22 had both a change in the elastic tissue of the skin as well
23 as keratosis. That's a premalignant condition. And on the
24 final summary the doctor lists him as having a basal cell

1 carcinoma of the right temple that was biopsied, he saw it
2 there.

3 Q So that's not by history, that's examined?

4 A That's right.

5 Q Did Dr. Susskind in his report have a table for
6 present existing cancers, sir, or was there some mention
7 made of that?

8 A I don't think so. There is a later chart. That
9 could be. But he did have a skin cancer.

10 Q So there are -- yes, here we are. If you look at
11 Plaintiffs' Exhibit 1467, sir, which is the Susskind-Hertzberg
12 report, is there a table there listing physical findings of
13 that kind?

14 A Yes, sir.

15 Q All right.

16 A And what it lists is significant clinical findings,
17 and he found in this case basal cell epithelioma. And McGinn
18 was exposed.

19 Q All right. Now with respect to Thomas Waldorf, sir.

20 A To the interviewer the workman said he had a cancer,
21 and the cancer was skin, and he goes further to say he had it
22 on his nose.

23 Q All right. What did the physician have to say,
24 Dr. Roush?

1 A I can't read the history, and on the physical
2 examination it doesn't look like he says he has a cancer.

3 Q There is no mention of it in what you can read?

4 A No, I can't read it. And on the findings, I can't --
5 I can't read it. And he was exposed.

6 Q Exposed? Now, with respect to Charles Dunn, sir,

7 A By history he had a -- through the interviewer he
8 had a skin cancer, and on the history by the physician he
9 states that he had a previous skin cancer and he had solar
10 elastosis of his face, and there's no summary by the physician
11 regarding that lesion.

12 Q All right. What do the records indicate with
13 respect to exposure, sir?

14 A Exposed. McClanahan?

15 Q Yes, William McClanahan, sir.

16 A Mr. McClanahan stated that he has never had a cancer.

17 Q What did the physician --

18 A The physician states in his history that a skin
19 cancer had been taken off of his forehead. And on his
20 examination he stated that he had the same skin changes, the
21 actinic keratosis, but he also had what he thought were skin
22 cancers, so that's another one that diagnosis would go in the
23 other part.

24 Q What do you mean by that, sir?

1 A Well, that goes in the other diagnosis.

2 Q Oh, I'm sorry. It was a finding?

3 A Right.

4 Q Okay. So it went in the other table that you
5 referred to before?

6 A Yes, sir. Yes, sir.

7 Q James Lewis, sir.

8 A And what -- the way he lists --

9 Q I'm sorry.

10 A -- in his -- on the diagnosis he lists solar effects,
11 actinic keratosis and epithelioma that he had listed there.
12 They're both, he's saying are solar effects. That's McClanahan?

13 Q I'm sorry. I forgot to ask you whether McClanahan
14 was exposed.

15 A Yes.

16 Q I'm sorry, did you say yes?

17 A Yes.

18 Q Oh, okay.

19 A Next is Lewis?

20 Q Yes, sir.

21 A The workman told the interviewer that he had a
22 mole removed from his shoulder the previous December that was
23 malignant. The physician in his history stated he had a
24 malignant mole removed in December of '78 with excision of muscle

1 and nodes and they were found, the nodes were found -- were
2 not involved with the cancer. And again he had the solar
3 elastosis. And in the diagnosis he lists malignant melanoma
4 excised. In addition, though, he includes two basal cell
5 cancers on his back, which goes on the other form.

6 Q In other words, that's something that he actually
7 found at the time?

8 A Right.

9 Q All right. What about any bowel cancer with Mr.
10 Lewis?

11 A I'm sorry. He had not listed anything on history
12 about bowel.

13 MR. CARR: Are you looking at the same one I'm
14 looking at, Doctor?

15 THE WITNESS: 325?

16 MR. CARR: 375.

17 THE WITNESS: Mine is marked over, so I couldn't
18 read it. That's 375 instead of 325. I'm sorry.

19 Q Yes, there's another Lewis, isn't there or is there?

20 A This is 375, and that's -- that's right here.

21 Q All right. 375, James Lewis.

22 A Yes, sir.

23 Q Now, let's --

24 A James Lewis. On -- He reported to the interviewer

1 that he had a cancer, and it was a bowel cancer.

2 Q So this doctor -- the information that we put down
3 for James Lewis before you were reading from a different form?

4 A Yes.

5 Q So it's not James Lewis's?

6 A Right, I was reading from 325.

7 Q From 325?

8 A 324.

9 Q Okay. Let's start over again with James Lewis.

10 A All right.

11 Q Are the names -- are the names on these records,
12 sir?

13 A Once in a while, sometimes.

14 Q Okay.

15 A James Lewis by history had listed that he had a
16 bowel cancer, and by the physician's history he described a
17 skin cancer of his left cheek treated with x-ray, and he also
18 he elastosis with a two millimeter papule on his nose.

19 Q Now, what did Mr. Lewis say in the interview about
20 skin cancer?

21 A Nothing.

22 Q The doctor, sir, mentioned skin cancer?

23 A Yes, sir.

24 Q What did the doctor say about bowel cancer?

1 A He had a colon resection in 19 -- and I can't read
2 what it is, the second digit is not clear -- and he on exam-
3 ination he had a colostomy, which means that he had a resection
4 and with some repair and a prosthesis put in.

5 Q Is there any mention of cancer by the physician?

6 A In 19 so and so for cancer, that was a colon cancer,
7 and I was unable to read the summary.

8 Q All right. What does the record indicate with respect
9 to exposure?

10 A Not exposed.

11 Q Not exposed? No, I have trouble again between 325
12 and 375. 375 is exposed.

13 Q All right, sir. How about Roy Rogers?

14 A By history he denied that he had a cancer, and the
15 physician recorded in history recurrent skin cancer, surgery
16 performed twice on his nose, nine times on his back, one time
17 on his right hand, and three times on the back of his left
18 ear, and once in his right front of his arm right at the break.

19 Q You mean at the inside of the elbow?

20 A Yes, yes. But he has recurrent skin cancer and
21 multiple, and on examination he just had the hyperkeratosis,
22 but no other lesions.

23 Q All right. What does the record indicate with
24 respect to exposure?

1 A Not exposed.

2 Q Now, Curtis Postlewaite-- I think that's thwaite, isn't
3 it?

4 A Postlewaite, I think.

5 Q How do you spell it?

6 A I just have the spelling that was on the exhibit.

7 Q P-O-S-T-L-E-T-H-W-I-T-E. And in his interview, sir?

8 A The workman told the interviewer that he had a cancer
9 on his forehead, that means of his skin.

10 Q Umhm. And what did the physician report?

11 A Physician made no record of it. He described solar
12 elastosis on his face, neck, and forearms, and that's it.

13 Q No mention by the physician?

14 A No, sir.

15 Q -- of a skin cancer?

16 A No, sir. And in the summary he made no mention
17 of there being a cancer problem.

18 Q And what about, what does the record indicate
19 with respect to exposure, sir?

20 A Exposed.

21 Q Homer Scarberry, sir.

22 A Mr. Scarberry describes having a tumor of his lung
23 and of his bowel.

24 Q He used the term --

1 A He had a cancer.

2 Q Was the term tumor or cancer used?

3 A No, he had a cancer by history.

4 Q Cancer of which, sir?

5 A Of the lung and of the bowel.

6 Q All right, sir. What was reported by the physician?

7 A That he had a thoracotomy in 1972, and a tumor
8 was removed, and the same year he had a tumor of the colon
9 that was removed.

10 Q The physician referred to them as tumors?

11 A Yes.

12 Q And what -- what does the record indicate with
13 respect to exposure, sir?

14 A Exposed.

15 Q And the last one on Plaintiffs' Exhibit 1473C is
16 Chester Gorrell.

17 A Mr. Gorrell told the interviewer that he had a skin
18 cancer, and on -- but the history by the physician he again
19 state d he had a skin cancer, and he again had actinic
20 reaction of the skin.

21 Q What does the record reflect with respect to
22 exposure, sir?

23 A Not exposed.

24 Q Now, sir, if you look at Plaintiffs' Exhibit 143 --

1 I'm sorry, 1473C, there are asterisks besides the names listed
2 there, are there not, sir?

3 A Yes, sir.

4 Q And a single asterisk means that each of those
5 persons was omitted from Table 1, correct?

6 A Yes, sir.

7 Q That's what this indicates?

8 A Yes, sir.

9 Q And a double asterisk means that they were omitted
10 from Table 1 and placed in the unexposed group, correct?

11 A Yes, sir.

12 Q Now, here is Table 1, is it not, Plaintiffs'
13 Exhibit 1471?

14 A Yes, sir.

15 Q Does it identify by name any of the people who are
16 included in it?

17 A No, sir.

18 Q Do you know any way in which to determine from
19 the records that you have before you how one can know whether
20 or not these individuals were omitted from Table 1?

21 A No, sir.

22 Q Now, based upon the examination of the records
23 that you have done, sir, and looking at Table 1 with respect
24 to those who are exposed, not exposed, and the occurrence

1 within those groups of skin cancer and cancer of all sites,
2 sir, would you -- I'd like to ask you with respect to each
3 one of these people whether you, based upon your review,
4 would include them in Table 1.

5 A Yes, sir.

6 Q All right, sir? Now, with respect to Willard
7 Crites.

8 A He had a skin cancer, and he was exposed, and I
9 would put him in Table 1 as -- not Table 1, but Table 1
10 exposed. We're talking about the first column.

11 Q Now -- yes, sir. What is it that Table 1 shows
12 in these numbers?

13 A Well, there are two categories. This refers to
14 those who were exposed to either TCP or to 2,4,5-T. That
15 would mean that they had been exposed to something that may
16 have an effect on their cancer experience.

17 Q All right. What do the numbers represent? Do
18 they represent people or do they represent cancers or what
19 do they represent?

20 A The exposed obviously means people. You can't
21 have cancers exposed. That's listing of how many people have
22 either chloracne, acne vulgaris skin cancer, hypertension,
23 or cancer.

24 Q All right. Now, they're listed as percentages

1 of the numbers up here, are they not?

2 A Right.

3 Q I'm sorry?

4 A Yes, sir.

5 Q So that the -- actually what is listed here is
6 people by number, by percentages?

7 A Yes, sir.

8 Q Now, would you include Willard Crites in a compilation
9 of Table 1?

10 A Yes, but I would write yes, skin with it.

11 Q Now, I note that Table 1 has skin cancer in one
12 category and cancer of all sites in another category, is that
13 correct?

14 A Yes, sir, and it says down there excluding skin
15 or except skin.

16 Q Except skin?

17 A Right.

18 Q All right.

19 A That means everything else besides skin.cancer.

20 Q So that why is that differentiated in that way?

21 A The fact that they're both cancers, and there are
22 measurable deviations from health that could be so recorded
23 and so skin is usually thought of different because skin is
24 so affected by radiation that outside of arsenic there are

1 very few such things there is little that is known to affect
2 and produce skin cancer. Whether the benz-pyrene we talked
3 about yesterday or polyaromatic hydrocarbons produce it in
4 those being exposed isn't real clear, but apparently there's
5 some of that as well.

6 Q So skin cancer is examined separately?

7 A Yes, sir.

8 Q From the other cancers?

9 A Yes, sir.

10 Q Now, what about Edward Miller, sir? What would
11 you do with Edward Miller?

12 A Well, yes, he had a bladder cancer, and he was
13 exposed.

14 Q So would you include him?

15 A Yes, sir.

16 Q In which--

17 A In the cancer of other sites or other, put it
18 bladder.

19 Q All right. What about John Hein, sir?

20 A It was confirmed that he had a bowel tumor, but
21 it was not confirmed that it was malignant. It may be
22 malignant, but with the data they had they couldn't confirm
23 that, and so he was exposed and so he --whether he really
24 had a cancer or not you would have to have the tissue to make

1 a determination.

2 Q All right. The interview says yes for bowel cancer,
3 the doctor says a tumor?

4 A Right.

5 Q Of the colon?

6 A Right.

7 Q Based upon that information, sir, would you include
8 him in Table 1 or not?

9 A Yes, because he was exposed.

10 Q All right.

11 A But I wouldn't know whether I would want to call it
12 cancer or not at this stage. There's a judgment that I would
13 have to have more information before I could decide whether
14 I would put him under cancer or not.

15 Q All right.

16 A There are many people that are operated on for masses
17 seen in the bowel by barium enema or by proctoscopic examination
18 or colonoscopic examination that you can't tell and you take
19 it out and look at it under a microscope whether they've got
20 a cancer or not. So you really can't tell from what's there.

21 Q Whether there's a cancer?

22 A That's right. That's the reason the physician
23 listed it as tumor.

24 Q All right, sir. Now, what about Edward McDade?

1 A McDade had a skin tumor, and he was exposed.

2 Q Would it be included in the skin cancer designation?

3 A I'd have to have more information to make a decision.
4 I'd have to talk to the physician and see how strongly he felt
5 about it or whether there was other associated things in the
6 skin that would confirm it for me. You can do it by association.

7 Q Now, why is it that you're saying that, because--
8 why is it that you need more information?

9 A Because the physician in listening to this and
10 knowing somebody had a skin tumor removed, he is not sure that
11 the diagnosis of skin had been made and you can't tell by
12 looking. The information isn't available to tell you about
13 skin tumors, so all he says is he's listing he found a skin
14 tumor.

15 Q So you would need more information?

16 A Yes, sir.

17 Q So based upon what you see in the records would you
18 at this time list either John Hein or Edward Dade in the--
19 either the skin cancer or the cancer of all sites categories?

20 A I couldn't put them in those categories with the
21 information available.

22 Q All right. What about Harry Reynolds, sir?

23 A Harry Reynolds, he had a bladder cancer, both by
24 history and by physical by the doctor, so he had a bladder cancer,

1 but he was not exposed.

2 Q So if he were put in Table 1, it would be in the
3 not exposed category?

4 A Yes.

5 Q Now, what about Edward Volz, sir?

6 A Edward Volz had a basal cell cancer, that's clear,
7 so he did have a basal cell cancer.

8 Q All right.

9 A But the bladder lesion was benign meaning that
10 was not a cancer.

11 Q So what would you do with respect to Edward Volz
12 and Table 1?

13 A I would not list him as having a cancer of other --
14 of all sites. He would not be in that category.

15 Q Would he be in the skin cancer category?

16 A Yes.

17 Q All right. What about Harry Honaker, sir?

18 A He had a prostate cancer and he had leukemia,
19 and he was exposed, so he would be listed in Table 1 under
20 the exposed down at the bottom.

21 The only problem is we can't list both of those down
22 there because that would be two people, so we only can put one.
23 The only way you can handle that when you've got two tumors
24 and we're talking about people, is there can be an asterisk

1 after there someplace and down at the bottom say man so and so
2 also had leukemia or if he's listed as prostate, and he also
3 had prostate, one or the other, but you can't have two diagnoses
4 in percent of people exposed who had cancer. That's one man
5 with two lesions.

6 Q So you'd list him yes, but you'd list him once?

7 A That's right.

8 Q Now, what about John Selby, sir?

9 A Selby there is a question of skin cancer, and he
10 was exposed. I can't go any further than that. He may have
11 a skin cancer, and what you need to do is you either get the
12 tissue if it was possible or you get a fresh specimen and
13 decide what he's got, but he was exposed, and he may have a
14 skin cancer.

15 Q So would you say something like probably yes or
16 what would you say about listing him based upon the information
17 you have before you there?

18 A I couldn't list him under skin cancer with the
19 information I've got available.

20 Q Okay.

21 THE COURT: Before you go on to the next person, it's
22 noon. Is this a good point to break for lunch?

23 MR. HEINEMAN: Your Honor, before we do could counsel
24 approach the bench for a minute?

1 THE COURT: Sure.

2 (A short conference was had at the bench off the
3 record.)

4 THE COURT: Okay. Ladies and gentlemen, we'll break
5 for lunch at this time. We'll resume again at one o'clock.
6 The admonishments that I gave you earlier will apply during
7 this break also. Court's adjourned for lunch.

8 (At this time Court adjourned for the day.)
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1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF ST. CLAIR)
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5 I, MARSHA SCHNIPPER, one of the Official Court
6 Reporters in and for the Twentieth Judicial Circuit of the
7 State of Illinois, and the Official Court Reporter who reported
8 the proceedings had in Frances Kemner, et al. vs. Monsanto
9 Company, No. 80-L-970 on the 24th day of July, 1985, do hereby
10 certify that the above and foregoing is a true and correct
11 transcript of the proceedings had at said hearing, which
12 proceedings were reported by me in shorthand and by me
13 correctly transcribed.

14 Dated this 26th day of July, 1985.

15 Marsha Schnipper
16 Official Court Reporter
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1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF ST. CLAIR)
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5 I, RICHARD P. GOLDENHERSH, Circuit Judge in and for
6 the Twentieth Judicial Circuit of the State of Illinois, and
7 the sole presiding Judge in the aforesaid cause on the 24th
8 day of July, 1985, do hereby certify that I have examined the
9 aforesaid transcript of the proceedings and further certify
10 that the same is a true and correct transcript of said
11 proceedings had in said cause.

12 Dated this _____ day of July, 1985.

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CIRCUIT JUDGE